IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 304 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI
and
Hon'ble MR.JUSTICE A.R.DAVE

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 Yes
2 to 5 No

SARASPUR MILLS LTD

Versus

COMMISSIONER OF INCOME TAX

Appearance:
MR MANISH J SHAH for MR JP SHAH for Petitioner
MR BB NAIK instructed by MR MANISH R BHATT
for Respondent No. 1

CORAM : MR.JUSTICE R.K.ABICHANDANI
and
MR.JUSTICE A.R.DAVE

Date of decision: 11/07/2000

ORAL JUDGEMENT

(per R.K. Abichandani, J.)

The Income Tax Appellate Tribunal, Ahmedabad Bench 'A', has referred the following questions for the opinion of this Court under section 256(1) of the Income-tax Act, 1961.

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in disallowing the bonus share issue expenses of Rs. 49708/- as capital expenditure?

2. Whether the Appellate Tribunal has been right in law in holding that the amounts relating to reimbursement of medical expenses and personal accident premium cannot be treated as perquisite for the purpose of disallowance u/s 40(c) of the I.T. Act, 1961?

3. Whether cash payment of house rent allowance amounting to Rs. 31,738/- is not includible for the purpose of computing disallowance under sec. 40A(5) of the I.T. Act, 1961?

4. Whether the assessee is entitled to extra shift allowance on exhaust fans costing Rs. 39,174/-?"

Question No. 1

The Tribunal disallowed the bonus share issue expenses claimed by the assessee as revenue expenditure. In Punjab State Industrial Development Corporation Ltd. v. Commissioner of Income-tax, reported in 225 ITR 792, the Supreme Court held that the fees paid to the Registrar of Companies for expansion of the capital base of a company is directly related to the capital expenditure incurred by the company and although incidentally that would help in business of the company and may also help in profit making, it has still retained the character of capital expenditure since it was directly related to expansion of the capital base of the company. Since expenses involved in the present case also related to the expansion of the capital base of the company, question No. 1 is answered in the affirmative, against the assessee and in favour of the revenue.

Question No. 2

The Tribunal held that the amounts relating to reimbursement of medical expenses cannot be treated as perquisite for the purpose of disallowance under section 40(c) of the said Act. It is pointed out that this aspect is covered by a decision of this Court in Commissioner of Income-tax v. Raipur Manufacturing Co., reported in 231 ITR 598 in which it was held that reimbursement of medical expenses was not deductible and was to be taken into consideration for the purpose of disallowance under section 40(c) of the Act. The first part of question No. 2 is, therefore, answered in the affirmative, against the assessee and in favour of the revenue.

As regards the second part of question No. 2 in which it has been held by the Tribunal that the amounts relating to reimbursement of personal accident premium cannot be treated as perquisite for the purpose of disallowance, it is stated that this point is covered in favour of the assessee in CIT v. Cama Motors Pvt. Ltd., reported in 234 ITR 699, in which it was held that the question whether the premium paid for the personal accident insurance policy taken out for the managing director would constitute benefit to the director within the meaning of section 40(c) or not would depend upon the nature of the policy, who had taken out the policy and whose obligation it was to pay the premium. It was held that where it was not shown that the director himself wanted to take out the insurance on his own obligation to pay the premium and where no such contention was canvassed before the authorities, the premium paid on personal accident insurance policy taken out in favour of the managing director was not meant to be a benefit or perquisite in his hands within the meaning of section 40(c) of the Act. The second part of question No. 2 as regards reimbursement of personal accident premium is, accordingly, answered in the negative, in favour of the assessee and against the revenue.

Question No. 3

This question is said to have been concluded by a decision of the Supreme Court in CIT v. Mafatlal Gangabhai and Co. (P) Ltd., reported in 219 ITR 644 in which it was held that payments made in cash such as house rent allowance, conveyance allowance, etc. were not covered by section 40(a)(v) and section 40A(5) of the

said Act. On the ratio of this decision, question No. 3, which relates to cash payment of house rent allowance, is answered in favour of the assessee and against the revenue.

Question No. 4

This question relates to extra shift allowance on exhaust fans and is again covered by a decision of this Court in assessee's own case rendered on 5.2.1997 in I.T.R. No. 27 of 1984, in which it was held that exhaust fans which were electrical machinery did not form an integral part of textile machinery, but fell in the category of electrical machinery used in textile factory and that this alone was sufficient to reject the claim for extra shift allowance. Question No. 4 is accordingly answered against the assessee and in favour of the revenue.

The Reference stands answered accordingly. No order as to costs.

_____

(hn)